IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.6.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A).Nos.603 & 604 of 2007

The Commissioner of Income Tax
Coimbatore. .. Appellant in both appeals

Vs.

M/s.Premier Mills Ltd.
No.185, ATD Street, Race Course,
Coimbatore 641 018. .. Respondent in both appeals

Appeals under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, Madras 'D' Bench dated 28.4.2006 made in ITA Nos.1892 and 1893/Mds/2000 for the assessment years 1991-92 and 1992-93 respectively. Against the order of the Commissioner of Income Tax (Appeals) Coimbatore in Assessment year of 1991-92 and 1992-93 dated 29.9.2000 in ITA NO. 452C to 455/99-2000 against the order of the Joint Commissioner of Income Tax and Deputy Commissioner of Income Tax Special Range I Coimbatore dated 10.02.2000, 31.3.1995 in PAN/GIR NO. 47-021-CV 1500 and CV-1500/SR I/CBE respectively

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For Appellant : Mr.N.Muralikumaran, Sr.S.C.

J U D G M E N T
(Delivered by P.D.DINAKARAN, J.)

The above tax case appeals are directed against the common order of the Income-tax Appellate Tribunal dated 28.4.2006 made in ITA Nos.1892 and 1893/Mds/2000 for the assessment years 1991-92 and 1992-93 respectively.

2. The Revenue is the appellant. The Assessing Officer completed assessment under Section 143(3) of the Act and reopened the same with prior permission of Commissioner of Income Tax and issued notice under Section

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148 of the Act and passed orders. Aggrieved, the assessee went on appeal to the Commissioner of Income-tax (Appeals), who dismissed the appeals. On further appeals, the Tribunal holding that the notice under Section 148 of the Act was issued after the expiry of four years from the end of the relevant assessment year and the same would amount to change of opinion, allowed the appeals. Hence, the above appeals raising the following substantial question of law.

> "Whether the Assessing Officer is empowered to reopen an assessment based on a subsequent supreme Court decision?"

3. It is fairly conceded by the learned Standing Counsel appearing for the appellant that the above issue is covered by the decision of this Court in COMMISSIONER OF INCOME-TAX v. ELGI ULTRA INDUSTRIES LTD. (T.C.No.441 of 2007 dt.6.6.2007).

4. In COMMISSIONER OF INCOME-TAX v. ELGI ULTRA INDUSTRIES LTD. (T.C.No.441 of 2007 dt.6.6.2007), this Court following the decision of COMMISSIONER OF INCOME TAX v. ELGI FINANCE LTD. (286 ITR 674) held as under.

> "In this case, notice was issued under Section 148 of the Act and served on the assessee on 03.08.2004, i.e., after four years from the end of the assessment year 1999-2000. The assessment was made under Section 143(3) of the Act. Both the Tribunal as well as the first appellate authority have followed the Supreme Court judgment reported in 264 ITR 566 in the case of C.I.T. Vs. Foramer France and held that there is no failure on the part of the assessee to disclose material facts and hence reassessment proceedings after the expiry of four years is not possible in view of the provisions of Section 147 of the Act. Admittedly, the reassessment proceedings are initiated after a period of four years. The scope of the said proviso to Section 147 of the Act has been considered by this Court in the case of Commissioner of Income-tax Vs. Elgi Finance Ltd., reported in 286 ITR 674, and the same reads as follows:
>
> > "The law relating to the reassessment has undergone a change from April 1, 1989. The change was brought in by the Direct Tax Laws (Amendment) Act, 1987. Two sets of provisions were available under section 147 in clause (a) and clause (b). This distinction has now been taken away by the

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Amendment Act. Previously, the line of distinction was a limitation period of four years and the limitation period exceeding four years. The Assessing Officer would reopen a back assessment within a period of four years as long as he had reason to believe in consequence of any information, that income has been under-assessed or income has escaped assessment. In the case of limitation, providing for a period exceeding four years, there should have been a failure on the part of the assessee to disclose fully and truly all material facts leading to the escapement of income. But as a result of the amendment brought with effect from April 1, 1989, the above distinction had been obliterated and the Assessing Officer could reassess the income as long as he had reason to believe that income chargeable had escaped assessment. The new law has inserted a proviso to section 147 in the following words:

> "Provided that where an assessment under sub-section(3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year."

In addition to the time-limits provided for under section 149, the law has provided another limitation of four years under the proviso to section 147. As far as the above proviso to section 147 is concerned, the law prescribes a period of four years to initiate reassessment proceedings,

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unless the income alleged to have escaped assessment was made out as a result of failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment."

In the present case, the Tribunal had considered the above proviso to Section 147 of the Act and held as follows:-

"Even now, before us, the Revenue could not contend that the reassessment is framed on submission of new material or information. Admittedly, the reassessment proceedings are initiated after four years as provided under the proviso to Section 147 of the Act. There is no charge that income chargeable to tax has escaped from assessment by reason of the failure on the part of the assessee to disclose fully and truly material facts necessary for assessment. The Hon'ble Apex Court in the case of CIT v. Foramer France (2003) reported in 264 ITR 566 has clearly laid down the principle that where there is no failure on the part of the assessee to disclose material facts, the reassessment proceedings after the expiry of four years is not possible in view of the provisions of Sec.147 of the Act. Respectfully following the judgement of the Hon'ble Apex Court, we uphold the order of the CIT(A) and accordingly the Revenue's appeal is dismissed.

8. In the result, both the appeals filed by the Revenue stand dismissed."

In case where the assessment is completed under Section 143(3) of the Income-tax Act, the reopening of the assessment under Section 148 beyond the period of four years at the end of the relevant assessment year can be sustained only if it is established that there is a failure on the part of the assessee to disclose fully and truly all material facts. In this case there is no finding that there is failure on the part of the assessee to disclose fully and truly all material facts. Further, all the material facts are available at the time of making original assessment. The Tribunal has correctly followed the principles enunciated in the Supreme Court judgment reported in 264 ITR 566 cited supra, as well as this Court judgment reported in 286 ITR

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674, in the case of Commissioner of Income-tax Vs. Elgi Finance Ltd. and came to the correct conclusion.

5. Under these circumstances, we do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference. In view of the same, no substantial questions of law arise for consideration of this Court and accordingly the tax case is dismissed.

In view of the above settled proposition in the decision cited supra, finding no substantial question of law that arises for our consideration, these appeals are dismissed. No costs. Consequently, M.P.No.1 of 2007 is also dismissed.

kpl

Sd/
Asst.Registrar

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Sub Asst.Registrar

To:

1.The Assistant Registrar,
Income Tax Appellate Tribunal
Madras Bench "C", Chennai.

2.The Secretary, Central Board
of Direct Taxes, New Delhi.

3.The Commissioner of Income
Tax (Appeals), Coimbatore.

4.The Joint Commissioner of Special Range I,
Coimbatore.

5. The Deputy Commissioner of Income Tax Special Range I
Coimbatore

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